

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

- (i) 40 percent in March–June,
- (ii) 25 percent in December–February, and
- (iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

- (i) 40 percent in March–June,
- (ii) 25 percent in December–February, and
- (iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day

of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

[37 FR 17732, Aug. 30, 1972, as amended at 54 FR 6385, Feb. 10, 1989]

EFFECTIVE DATE NOTE: At 57 FR 61780, Dec. 29, 1992, § 1012.13 was amended by suspending paragraph (b)(2) indefinitely, effective Dec. 1, 1992.

#### § 1012.14 Other source milk.

*Other source milk* means the skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:

- (1) Producer milk;
- (2) Such products from pool plants; and
- (3) Such products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products and eggnog from other plants;

(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

[41 FR 43157, Sept. 30, 1976, as amended at 46 FR 51235, Oct. 19, 1981]

#### § 1012.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

- (1) Plain or sweetened evaporated milk, plain or sweetened evaporated